

REMARKS

Claims 1-35 are currently pending in the application. In the Office Action dated April 1, 2008, claims 1-35 were rejected. By this Amendment, claims 1, 18, and 32-35 have been amended, without acquiescence or prejudice to pursue the original claims in a related application. No new matter has been added.

Claim Rejections - 35 USC § 101

Claims 32 and 34 are rejected under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory subject matter. Without acquiescence to the stated reason for rejection, claims 32 and 34 have been amended. Thus, Applicants respectfully request that this rejection be withdrawn for claims 32 and 34.

Claim Rejections - 35 USC § 102

Claims 18-31 and 34-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Burgoon. (United States Patent No.: 5,706,510).

Claim 18 recites the following limitation "creating a first private symbolic link to reference the first version of the shared file, the first private symbolic link comprising link criteria that designates that members in a first group are authorized to use the first private symbolic link, wherein the first private symbolic link is used to perform a rolling upgrade in a computing system; and creating a second private symbolic link to reference the second version of the shared file, the second private symbolic link only applying to members of a second group associated with the second private symbolic link, wherein the second private symbolic link is used to perform the rolling upgrade in the computing system." (Emphasis added). Burgoon fails to disclose the limitations as claimed.

Burgoon discloses a symbolic history management system (ZHMS) which allows a user to create annotated symbolic links (zymlinks) to files in a shared file system. The private symbolic link of Burgoon is used to view and access history managed computer files. It is not used to perform rolling upgrades. Thus, the private symbolic link in Burgoon does not disclose the first private symbolic link and the second private symbolic link for rolling upgrades as claimed because the private symbolic link of Burgoon does not perform any rolling upgrades in a computer system.

For at least these reasons, Applicants submit that Burgoon fails to anticipate every limitation of claim 18. Because claims 34 and 35 share each of the limitations of claim 18 discussed above, they are not anticipated by Burgoon. Furthermore, because claims 19-31 depend from claims 18, 34 and 35, they also are not anticipated by Burgoon.

Claim Rejections - 35 USC § 103

Claims 1-17 and 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Burgoon in view of Earl et al. (United States Patent No.: US 6,966,058 B2).

Claim 1 recites at least the following limitations “method for a rolling upgrade... comprising... bringing down a first member, wherein a second member is not brought down while the first member is down, wherein the first member and the second member are located on a same node of the computing system” (emphasis added).

According to the Office Action, Burgoon fails to disclose any rolling upgrades, bring down the first member and not bringing down the second member as claimed. Moreover, Burgoon is silent regarding the first and second members being located on the same node.

Earl also does not disclose or suggest these limitations. In fact Earl teaches away from these limitations because Earl reboots each of the plurality of nodes sequentially. Earl teaches that the nodes are taken down one at a time for reboot. Earl does not bring down a first member of a node and not bring down a second member of the same node. In the situation where the first member and second member are located on the same node, Earl teaches that they will be taken down at the same time. Therefore, Earl does not teach or suggest “bringing down a first member, wherein a second member is not brought down while the first member is down, wherein the first member and the second member are located on a same node of the computing system” as claimed.

For at least these reasons, Applicants submit that Burgoon in view of Earl fails to teach or suggest every limitation of claim 1. Because claims 32 and 33 share each of the limitations of claim 1 discussed above, they are not rendered obvious by Burgoon in view of Earl. Furthermore, because claims 2-17 depend from claims 1, they also are not unpatentable.

CONCLUSION

Based on the foregoing, all remaining claims are in condition for allowance, which is respectfully requested. If the Examiner has any questions or comments regarding this response, the Examiner is respectfully requested to contact the undersigned at the number listed below.

To the extent that any arguments and disclaimers were presented to distinguish prior art, or for other reasons substantially related to patentability, during the prosecution of any and all parent and related application(s)/patent(s), Applicant(s) hereby explicitly retracts and rescinds any and all such arguments and disclaimers, and respectfully requests that the Examiner re-visit the prior art that such arguments and disclaimers were made to avoid.

Credit card payment by USPTO - EFS in the amount of \$120.00 is charged herein.

The Commissioner is authorized to charge Vista IP Law Group LLP Account No. 50-1105 for any fees required that are not covered, in whole or in part, and to credit any overpayments to said Deposit Account No. 50-1105.

Respectfully submitted,

Dated: August 1, 2008

By: 

Jasper Kwok
Registration No. 54,921

Vista IP Law Group LLP
1885 Lundy Avenue,
Suite 108
San Jose, CA 95131
Telephone: (408) 321-8663